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E-filed on: September 19, 2018

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:	Lead Case No. 18-10792-LEB
Lucky Dragon, Hotel & Casino, LLC, Debtor,	Jointly Administration with Case No. 18-10850-LEB Chapter 11
In re: Lucky Dragon, LP Debtor.	RESPONSE TO DEBTORS' MOTION FOR ORDER AUTHORIZING AND APPROVING HOTEL CLOSING AND JOINDER TO SNOW COVERED CAPITAL, LLC'S RENEWED MOTION FOR RELIEF FROM THE AUTOMATIC STAY
	Date of Hearing: September 20, 2018 Time of Hearing: 9:30 a.m.
	Judge: Hon. Laurel E. Babero

PDS Gaming, LLC (“PDS”)¹ and PDS Acquisition, LP (“PDS Acquisition”),² by and through their counsel, Richard F. Holley, Esq., and Andrea M. Gandara, Esq., of the law firm

¹ PDS Gaming Corporation-Nevada, LLC, a Nevada limited liability company, is the successor in interest by way of conversion to PDS Gaming Corporation-Nevada, which is a wholly owned subsidiary of PDS Gaming, LLC, a Minnesota limited liability company, and successor in interest by way of conversion to PDS Gaming Corporation (collectively referred to as “PDS”). PDS Acquisition, LP is the sole member of PDS Holding, LLC, a Nevada limited liability company; PDS Holding, LLC is the sole member of PDS Gaming, LLC.

² On or about December 13, 2016, PDS Gaming Corporation-Nevada, as seller, entered into a Purchase and Sale Agreement with PDS Lendco, LP, as purchaser (“PDS Lendco”), pursuant to which it sold to PDS Lendco the equipment that is this subject of Lease Schedule 2 and assigned to PDS Lendco all of its rights under Lease Schedule No. 2. PDS Acquisition, LP is the successor to PDS Lendco.

1 Holley Driggs Walch Fine Wray Puzey & Thompson, hereby file their *Response to Debtors'*
 2 *Motion for Order Authorizing and Approving Hotel Closing* that was filed on September 13, 2018
 3 [ECF No. 806], and joinder ("Joinder") to Snow Covered Capital, LLC's ("Snow Covered" or
 4 "SCC") *Renewed Motion for Relief from the Automatic Stay*, filed on June 15, 2018 [ECF
 5 No. 508].

6 I. PROCEDURAL HISTORY

7 1. On February 16, 2018, Lucky Dragon, Hotel & Casino, LLC (the "LLC") filed a
 8 Chapter 11 petition for relief.

9 2. On February 21, 2018, Lucky Dragon, LP (the "LP") filed a Chapter 11 petition for
 10 relief, initiating Case No. 18-10850-LEB, and filed a motion to jointly administer its case with
 11 Lucky Dragon, Hotel & Casino, LLC's case, which the Court granted at hearing on February 21,
 12 2018.³

13 3. On June 15, 2018, Snow Covered filed a *Renewed Motion for Relief from the*
 14 *Automatic Stay* ("Snow Covered's Stay Relief Motion") [ECF No. 508].

15 4. On July 5, 2018, the Official Committee of Unsecured Creditors (the "Committee")
 16 filed its opposition to Snow Covered's Stay Relief Motion [ECF 545].

17 5. On July 26, 2018, the Debtors filed the *Second Amended Plan of Reorganization*
 18 *for Lucky Dragon Hotel & Casino, LLC and Lucky Dragon, LP Under Chapter 11 of the*
 19 *Bankruptcy Code* (the "Plan") [ECF No. 610], to which Debtors attached Exhibit A, a list of
 20 executory contracts to be rejected in connection with the Debtors' Second Amended Chapter 11
 21 Plan.

22 6. Pursuant to Article V of the Plan, on September 10, 2018, the Debtors' held an
 23 auction (the "Auction") of their assets to pay creditors. Snow Covered was the successful bidder
 24 for the LP's assets, including the Property;⁴ however, the LLC's assets (which are unencumbered)
 25 were unsold.

26
 27 ³ Together, Lucky Dragon Hotel & Casino, LLC and Lucky Dragon, LP are referred to as
 "Debtors".

28 ⁴ Property is a term defined in the Second Amended Plan. See ECF No. 610.

1 7. On September 7, 2018, Debtors filed *Plan Supplement for the Second Amended*
 2 *Plan of Reorganization for Lucky Dragon Hotel & Casino, LLC and Lucky Dragon, LP Under*
 3 *Chapter 11 of the Bankruptcy Code* [ECF No. 764].

4 8. On September 13, 2018, Debtors filed *Motion for Order Authorizing and*
 5 *Approving Hotel Closing*, to “shutter the Hotel and preserve the LLC’s remaining assets for the
 6 estates.” See ECF No. 806.

7 9. On September 13, 2018, PDS and PDS Acquisition filed their *Objection to*
 8 *Confirmation of Second Amended Plan of Reorganization for Lucky Dragon Hotel & Casino, LLC*
 9 *and Lucky Dragon, LP Under Chapter 11 of the Bankruptcy Code*, contending that Debtors do not
 10 have any means to pay PDS in full for the unpaid amount of its administrative claim on the
 11 effective date of the Plan as required, pursuant to Art. 2, Sec. A of the Plan, and Section
 12 1129(a)(9)(A) of the Bankruptcy Code. See ECF No. 818.

13 10. On September 17, 2018, the Debtors filed a *Notice of Non-Opposition to the*
 14 *Renewed Motion of Snow Covered Capital, LLC for Relief from the Automatic Stay* [ECF No. 826].
 15 The Official Committee of Unsecured Creditors **did not** join in or file its own notice of non-
 16 opposition and therefore presumably intends to press its opposition to Snow Covered’s Stay Relief
 17 Motion [ECF No. 545].

18 11. On September 18, 2018, Debtors filed their *Motion for the Entry of an Order*
 19 *Authorizing the Debtors to Reject Certain Executory Contracts* [ECF No. 834]. Hearing has been
 20 set on shortened time for September 26, 2018.

21 II. ARGUMENT

22 On August 23, 2016, Debtors entered into a Master Lease Agreement (“Master Lease”)
 23 with PDS. A true and correct copy of the Master Lease is attached to the Second Cleary Decl.⁵ as
 24 **Exhibit “1”**. The Master Lease establishes the general terms and conditions by which PDS agreed

25
 26 ⁵ See ECF No. 762, *Declaration of Peter D. Cleary in Support of PDS Gaming LLC and PDS*
 27 *Acquisition, LP’S Objection to Notice Regarding (A) Executory Contracts and Unexpired Leases*
 28 *Which may be Assumed and Assigned Pursuant to Section 365 of the Bankruptcy Code, (B)*
 Amounts Required to Cure Defaults Under Such Executory Contracts and Leases, and (C) Related
 Procedures that was filed on September 7, 2018.

1 to lease equipment as more particularly described in each Lease Schedule. *See Ex. “1” (Master*
2 *Lease, ¶ 3).* The Debtors entered into three Lease Schedules with PDS for various equipment: (1)

3 Lease Schedule 1 (Central Plan) (“Lease Schedule 1”) for equipment and parts that comprised the

4 heating and cooling systems at 300 West Sahara Avenue, Las Vegas, Nevada (“Premises”); (2)

5 Lease Schedule 2 (F&E) (“Lease Schedule 2”) for the lease of the surveillance and monitoring

6 systems at the Premises; and (3) Lease Schedule 3 (Gaming Devices) (“Lease Schedule 3”) for

7 Class III Gaming Devices at the Premises.⁶ True and correct copies of Lease Schedule 1, Lease

8 Schedule 2, and Lease Schedule 3 are attached to the Second Cleary Decl. [ECF No. 762] as

9 **Exhibit “2”, Exhibit “8”, and Exhibit “17”**, respectively. Each Lease Schedule incorporates by

10 reference the terms of the Master Lease. *See Ex. “1” (Master Lease, ¶ 3).*

11 Pursuant to section 6 of the Master Lease, PDS could require the execution of an
12 intercreditor agreement between PDS, Lessee and Lessee’s secured lender in a form acceptable to
13 PDS. Prior to PDS’s transaction with the Debtors, the Debtors had obtained financing from Snow
14 Covered and provided Snow Covered with a blanket lien on the Debtors’ assets. Accordingly, PDS
15 exercised its rights under section 6 of the Master Lease Agreement and required that the Debtors,
16 PDS and their lender, SCC, to execute an acceptable intercreditor agreement. To that end, the
17 Debtors and SCC entered into an Intercreditor Agreement with PDS, dated August 23, 2016,
18 expressly acknowledging that the PDS Equipment was the sole and exclusive assets of PDS and
19 that SCC had no interest in the PDS Equipment. The Intercreditor Agreement further subordinated
20 any interest, security interest, or lien SCC held or would later acquire in the PDS Equipment to
21 PDS and recognized PDS’s interest in the PDS Equipment as superior and senior to SCC. As part
22 of the Intercreditor Agreement, SCC also executed UCC-3s expressly assigning any security
23 interest it may have in the PDS Assets to PDS. *See First Cleary Decl.⁷*

24

25 ⁶ When the Debtors ceased gaming operations, the gaming equipment that is the subject of Lease
26 Schedule 3 was returned to PDS. The gaming equipment has since been liquidated by PDS and no
further obligation is owing by the Debtors under Lease Schedule 3. *See Second Cleary Decl. [ECF*
No. 762, at ¶46].

27 ⁷ *See ECF No. 423, Declaration of Peter D. Cleary in Support of Limited Opposition to Application*
28 *for the Entry of Interim and Final Orders Authorizing the Debtors to Obtain Financing Pursuant*
to 11 U.S.C. Sections 105, 361, 362 and 364 that was filed on May 22, 2018.

Pursuant to the Debtors' Motion for Order Authorizing and Approving Hotel Closing, the Debtors have requested an order from the Court permitting closure of the Hotel and to immediately stop the administrative costs of operating the facility. [ECF No. 806]. Supposedly, this is being done to facilitate the orderly transition of the ownership of the Property to Snow Covered [ECF No. 806 at 4:26-27]. PDS and PDS Acquisition are informed and believe that the DIP Lender is no longer providing debtor-in-possession financing to pay for operational expenses. PDS and PDS Acquisition are concerned that, with the cessation of debtor-in-possession financing and closure of the Hotel, the Debtors will cease providing insurance on the Property, cancel utilities that maintain climate-controlled environment, or security to protect and preserve the Property and the equipment of PDS and PDS Acquisition located therein. As a result, the Property and its contents will be at serious risk.

Moreover, the Debtors are posturing to absolve themselves from any responsibility for maintenance, preservation or protection of the equipment of PDS, PDS Acquisition and others, pursuant to Debtors' very recently filed *Motion for Entry of an Order Authorizing Debtors to Reject Certain Executory Contracts* ("Motion to Reject Executory Contracts") [ECF No. 834], set for hearing on Wednesday, September 26, 2018 at 9:30 a.m.

To the extent the Committee successfully opposes the renewed motion for stay relief filed by Snow Capital and the Court grants the Debtors' Motion to Reject Executory Contracts, the Debtors will remain the owners of the Property with no means or intent of preserving the Property and with no responsibility for preserving, protecting or maintaining its content, including the equipment that is the subject of the PDS Lease. At the same time, Snow Capital will not have an ownership interest in the Property, or in the equipment that is the subject of the rejected equipment leases. As such, not only will the Property be at risk, but the equipment that is the subject of the PDS Leases will be at considerable risk. The equipment subject to the PDS Leases includes the central plant, which is essential to the operation of the facility.

Based on these concerns, PDS and PDS Acquisition joins in and supports the renewed Motion for Relief from the Automatic Stay filed by Snow Covered. Relief from stay will enable Snow Covered to foreclose on the Property, for which it was the successful bidder pursuant to a

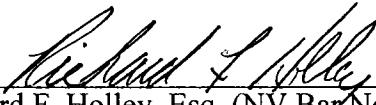
1 credit bid at the recent Auction, and to proceed to foreclosure. In the interim, Snow Covered may
2 choose to seek the appointment of a receiver who can protect and preserve the Property and its
3 contents pending foreclosure. This scenario will also enable PDS to enforce the Intercreditor
4 Agreement with Snow Covered.

5 **III. CONCLUSION**

6 Based on the above, PDS and PDS Acquisition joins in and supports the Renewed Motion
7 for Relief from Automatic Stay filed by Snow Covered.

8 Dated this 19th day of September 2018.

9
10 **HOLLEY DRIGGS WALCH**
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22 HDW | FINE•WRAY•PUZEY•THOMPSON
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1 CERTIFICATE OF SERVICE

2 I hereby certify that I am an employee of Holley Driggs Walch Fine Wray Puzey &
3 Thompson, and that on the 19th day of September 2018, I caused to be served a true and correct
4 copy of RESPONSE TO DEBTORS' MOTION FOR ORDER AUTHORIZING AND
5 APPROVING HOTEL CLOSING AND JOINDER TO SNOW COVERED CAPITAL, LLC'S
6 RENEWED MOTION FOR RELIEF FROM THE AUTOMATIC STAY in the following manner:

7 (ELECTRONIC SERVICE) Under Administrative Order 02-1 (Rev. 8-31-04) of
8 the United States Bankruptcy Court for the District of Nevada, the above-referenced document
9 was electronically filed on the date hereof and served through the Notice of Electronic Filing
10 automatically generated by that Court's facilities.

11 (UNITED STATES MAIL) By depositing a copy of the above-referenced
12 document for mailing in the United States Mail, first class postage prepaid, at Las Vegas, Nevada,
13 to the parties listed on the attached service list, at their last known mailing addresses, on the date
14 above written.

15 (OVERNIGHT COURIER) By depositing a true and correct copy of the above-
16 referenced document for overnight delivery via Federal Express, at a collection facility maintained
17 for such purpose, addressed to the parties on the attached service list, at their last known delivery
18 address, on the date above written.

19 (FACSIMILE) That I served a true and correct copy of the above-referenced
20 document via facsimile, to the facsimile numbers indicated, to those persons listed on the attached
21 service list, on the date above written.

22 
23 An employee of Holley Driggs Walch Fine
24 Wray Puzey & Thompson